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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

KIN/143083

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by Perez-Pena Limited on behalf of the Bureau of Milwaukee Child Welfare in regard to Kinship Care, a hearing was commenced on October 30, 2012, adjourned to obtain guardianship information and concluded on December 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Kinship Care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Jazette Anderson, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the paternal grandmother of MW (age 4) and MW (age 7).
3. Petitioner filed this appeal to contest the denial of the Kinship Care application filed by Petitioner in August 2012 seeking Kinship Care benefits for MW and MW.
4. Petitioner previously applied for Kinship Care benefits in August 2011. That application was denied in March 2012. Petitioner filed a request for a hearing with the Division of Hearings and Appeals to

contest the denial of that Kinship Care application. Division of Hearings and Appeals case # KIN/139923.

5. The Division of Hearings and Appeals scheduled hearing for case # KIN/139923 for June 6, 2012. A decision was issued on June 22, 2012 that sustained the agency denial of Petitioner's August 2011 Kinship Care application.
6. Petitioner requested a rehearing of the Division of Hearings and Appeals June 22, 2012 decision. That was received by the Division of Hearings and Appeals on July 9, 2012. That request for rehearing was denied on July 10, 2012.
7. After the denial of the July 9, 2012 rehearing request, Petitioner reapplied for Kinship Care benefits. That application was denied and Petitioner so notified.
8. The reason for the denial of Petitioner's August 2012 Kinship Care application was that the evidence is not sufficient to demonstrate that MW and MW were children in need of protection or services.
9. Petitioner was appointed guardian of these two children in November 2012. The guardianship was established under Chapter 54 of the Wisconsin statutes.
10. The father of these two children is K LW and is incarcerated out of state.
11. The mother of the two children is RM. She is 30 years of age (3/4/82). There is no documentation of a serious alcohol or other drug abuse (AODA) issues, no Child Protective Services (CPS) history, no known criminal record, and no medical or mental health issues. She is employed at a fast food restaurant and attends Milwaukee Area Technical College (MATC).

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in *Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6)*. Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

For a guardianship based Kinship Care application under statutory subsection (3n) the Wisconsin Administrative Code further requires that the Kinship Care applicant provide proof that they have been named as guardian under *§48.977, Stats.; Wis. Admin. Code, §DCF, 58.15*. In this case, there is a guardianship but it is under Chapter 54 of the Statutes so I cannot find that Petitioner is eligible to receive Kinship under guardianship provisions.

This decision must still decide whether Petitioner's case meets CHIPS based Kinship Care eligibility criteria. The Statutes require that:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$215 per month to a Kinship Care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The Kinship Care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the Kinship Care relative and that the placement with the Kinship Care relative is in the best interests of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or

her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.
§48.57(3m)(a)2(am), Wis. Stats.

The *Wisconsin Administrative Code*, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
 - 1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
 - 2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
 - 3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
 - 4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It must also be noted that, in Decision No. KIN- 40/51985, dated May 22, 2002, the Department’s deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in *Wis. Stat. §48.57(3m)(am)*, that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case. It also confirms that at least one of the criteria in the list at *Wis. Stat. §48.13* must be satisfied.

Chapter 938 of the Statutes deals with juvenile justice issues and juveniles involved in delinquencies who also need protection or services; Chapter 48 is entitled ‘Children’s Code’ and is the relevant chapter for this case. The statutory citation referenced above – *Wis. Stat. §48.13*, which provides for jurisdiction over children alleged to be in need of protection or services – is relevant here and provides as follows:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

Wis. Stats., §48.13.

In a nutshell, the placement must be in the best interests of the child and there must be need for the placement as demonstrated by evidence of the child being a CHIPS or JIPS child or the likelihood that the child would be such if living with a parent.

In this case, the agency representative was unable to visit with the biological mother as she was in the process of moving.

Here there is, as of November 2012, a guardianship in place for the two children but it is under Chapter 54 of the statutes thus there is no finding by the Court in the guardianship proceedings that the children were in danger of meeting CHIPS criteria. In fact, very little, if anything, has changed since the Division of Hearings and Appeals decision of June 22, 2012 that sustained the denial of the August 2011 Kinship Care application. RM works, attend school at the MATC and has contact with the children. She had them for some portion of Thanksgiving Day 2012 and will likely again have them with her for some portion of Christmas 2012. There is no documented criminal, significant AODA history (Petitioner reports RM used to drink considerably but phase of her life seems to be in the past) or any CPS history. The guardian ad litem for the children from the Milwaukee County Children's Court guardianship cases did write a letter on behalf of Petitioner. That letter indicates that the reason that RM cannot care for the children is that she is in school. The letter is otherwise inconclusive. *See letter from Legal Aid Society, received by the Division of Hearings and Appeals on November 16, 2012, Exhibit # 6.* RM does move frequently but, again, is stable as to employment and school and does have contact with the children.

While this placement may be in the best interests of these two children, the record does not demonstrate that they would be in need of protection or services as defined in the Wisconsin Statutes if they lived with their mother. The evidence does not, therefore, demonstrate that Petitioner's application for Kinship Care meets the standards necessary for approval.

CONCLUSIONS OF LAW

That the agency correctly determined that the Petitioner is not eligible for Kinship Care benefits for MW and MW.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

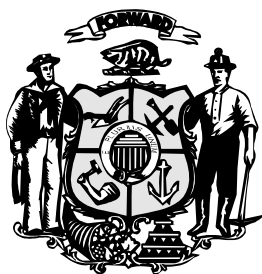
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2012

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2012.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care